as a matter of law the conduct affected interstate commerce. The court of appeals found that by stressing the words "if believed" in his instructions, the trial judge clearly indicated the jury's function, and the instructions as a whole met the required standards. See *Nick* v. *United States*, 122 F2d 660 (C.A. 8), certiorari denied, 314 U.S. 687; *Hulahan* v. *United States*, 214 F.2d 441 (C.A. 8), certiorari denied, 348 U.S. 856; *United States* v. *Green*, 246 F.2d 155 (C.A. 7), certiorari denied, 355 U.S. 871.

Petitioners stress that affecting interstate commerce is an element of the offense under the Hobbs Act, on which petitioners were entitled to have the jury determine the facts. The majority opinion below, however, is not in disagreement, but points out that while the jury is "to determine whether the facts have been proved," the court "should determine whether the facts alleged meet the statutory requirement of affecting interstate commerce" (Pet. App. A43–A44). As noted, the jury's role as the finder of fact on this issue was repeatedly stressed in the charge by the requirement that the jury must find the facts to be as alleged by the government before the requirement of affecting interstate commerce would be met.

3. Petitioners make no complaint regarding pretrial publicity. They argue that they were denied due process because the trial received extensive newspaper coverage locally, the jury was not sequestered

and the trial judge did not take adequate steps to protect the jury's impartiality.* The court of appeals, however, found that it was not necessary to reach the issue of the adequacy of the trial judge's steps, because it found that the newspaper publicity was not prejudicial. The newspaper stories and headlines were not editorial comment on the defendants' guilt nor evaluation of the evidence presented, as in *Sheppard* v. *Maxwell*, 384 U.S. 333, and *Silverthorne* v. *United States*, 400 F. 2d 627 (C.A. 9). The articles here were merely summaries and presentations of trial highlights which could not have prejudiced the jury (Pet. App. A63–A65). See *United States* v. *Manning*, 440 F. 2d 1105, 1112 (C.A. 5), petition for certiorari pending, No. 71–5342; *Gordon* v. *United States*, 438 F. 2d 858, 871–874 (C.A. 5), certiorari denied, October 12, 1971, No. 70–5277. See also *Holt* v. *United States*, 218 U.S. 245, 251.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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*The trial judge did instruct the jury at the beginning of the trial and at the end of each day that they were not to read news stories or listen to broadcasters about the trial (Pet. App. A60–A61).

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